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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Eligibility for the Specialized)
Mobile Radio Services and Radio)
Services in the 220-222 MHz Land)
Mobile Band and Use of Radio)
Dispatch Communications)

GN Docket No. 94-90

To: The Commission

**COMMENTS IN SUPPORT OF ELIMINATION OF
WIRELINE/SMR OWNERSHIP PROHIBITION**

United Telephone Mutual Aid Corp. (United), by its attorney, hereby files comments in response to the Commission's August 11, 1994 Notice of Proposed Rule Making, FCC 94-202, in support of the immediate elimination of the prohibition which prevents a wireline exchange carrier from controlling an SMR system. In support whereof, the following is respectfully submitted:

**The Wireline Prohibition Is Not Supported
By any Rational Policy Consideration**

1. United is a small, independent wireline telephone exchange company with approximately 4,200 access lines providing local exchange service to Langdon, North Dakota. United is keenly interested in providing quality telecommunications services and introducing new mobile radio services to its telephone exchange service area and areas adjacent to its telephone exchange service area. For several years United has been interested in owning and operating an SMR service within its telephone exchange area.

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However, United's has been precluded from the SMR field because of the wireline prohibition contained in §90.603(c).¹

2. The Commission's prohibition is not supported by any rational policy consideration. There is no similar prohibition on the provision of cellular or IMTS service in the common carrier services. The wireline/SMR waiver requests which were subject comment earlier this year, DA 94-329, note that there does not appear to be any contemporaneous discussion by the Commission as to why the wireline/SMR prohibition was adopted. See e.g., Southwestern Bell Corporation (SWB) Request for Permanent Waiver, p. 6.

3. SWB noted that subsequent to the adoption of the wireline prohibition, the Commission has articulated post facto rationalizations which might have supported imposition of the prohibition in 1974. However, SWB clearly analyzes why each of the four purported justifications offered by the Commission does not support the prohibition. SWB Request for Permanent Waiver, pp. 6-12.

4. An additional consideration which counsels not only for grant of the wireline waiver requests currently pending before the Commission, but outright elimination of the rule, pertains to the Commission's recently adopted rules relating to the regulatory status of SMR service providers.

¹ In May 1994 United filed a request for a waiver of the wireline prohibition. To our knowledge, that waiver request has not been acted upon. United requests that action be taken on that waiver request. While United supports the elimination of the wireline/SMR prohibition proposed in the Notice of Proposed Rule Making, that elimination, if adopted, would not occur for months or even years. The last time the Commission proposed eliminating the wireline/SMR prohibition, the rule making remained open for approximately six years before the Commission abruptly terminated the proceeding without taking action. Under these circumstances, immediate action upon United's waiver request would serve the public interest.

5. SMR providers are reclassified as "commercial mobile service providers" (CMSR). There is to be regulatory parity between services which were previously classified as "common carrier" and "private carrier" which are interconnected and operated for profit. Recently enacted amendments to the Communications Act eliminated the several States' ability to regulated the entry of CMSRs.² Under these circumstances, there is no rational basis for continuing the wireline/SMR prohibition.

6. Currently, there are two cellular carriers authorized to each market area, there are either numerous SMR licensees in each market area or there are SMR frequencies which remain available after having been available for a number of years, there are numerous Part 22 two-way channels available in many markets, and the Commission has recently allocated an enormous amount of spectrum to broadband (two-way) Personal Communications Services. With this abundance of spectrum available to all entrepreneurs, there does not appear to be any basis for excluding wireline exchange companies from the provision of one type of mobile radio service.

7. At footnote 73 of the Notice of Proposed Rule Making the Commission notes that it is unaware of any pending complaints alleging discriminatory interconnection in the cellular radio context. The wireline/SMR prohibition should be eliminated where there is no substantial evidence demonstrating that wireline carriers, as a class, discriminate against other carriers concer-

² Private carrier services were created, in part, to permit the introduction of new communications technologies in states which regulated the entry of common carrier radio service providers.

ning interconnection.³ United has never been found to have unreasonably denied interconnection to a mobile service provider. Thus, maintenance of the wireline/SMR prohibition serves no public interest purpose.

Structural and Accounting Standards Are Not Required

8. United opposes the imposition of a separate subsidiary requirement upon wireline SMR service providers, especially for non-BOC exchange carriers. As the Commission notes in the Notice of Proposed Rule Making, SMR is a fast growing, maturing industry in which non-telco affiliated companies have a significant headstart. Given the headstart enjoyed by current SMR market players, the public interest would not be served by hobbling a potential competitor with an unnecessary corporate business structure.

9. Moreover, if the Commission cannot find that rural telephone companies as a class will improperly cross subsidize competitive SMR service with regulated exchange telephone revenue, then even a Commission mandated accounting requirement is inappropriate. Intraorganizational accounting conventions should be left to the states' regulators absent a significant demonstrable federal interest.

The Common Carrier Dispatch Prohibition Should be Eliminated

10. Finally, United supports the Commission's suggestion that wireline telephone companies be permitted to provide dispatch services over SMR systems. Whether a call goes through a mobile

³ The Commission currently requires reasonable interconnection of cellular carriers and other mobile radio common carrier service providers to local exchanges with no apparent significant problems. We note that in many cases the local exchange carrier is also a mobile service competitor.

telephone switch before the radio signal reaches the SMR subscriber does not matter to the subscriber. The subscriber's whole interest is in timely receiving the message carried via the radio signal; the subscriber is not interested in the signal is processed by the carrier.

11. At paragraph 12 of the Notice of Proposed Rule Making the Commission notes that Congress' concern in implementing the dispatch prohibition was to conserve spectrum. However, far more mobile communications spectrum exists today than in 1982 when Congress adopted the prohibition. Moreover, the marketplace should determine how much mobile radio spectrum is utilized for dispatch services. An artificial restriction on the provision of dispatch services unnecessarily limits the choices available to consumers.

WHEREFORE, in view of the information presented herein, it is respectfully requested that the Commission 1) eliminate the wireline prohibition contained in §90.603(c) of the Rules, 2) refrain from imposing a separate subsidiary or accounting standards upon rural wireline/SMR providers, and 3) lift the common carrier dispatch prohibition.

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September 21, 1994

Respectfully submitted,
UNITED TELEPHONE MUTUAL
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